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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,994	10/05/2004	Richard Chene	0523-1016	2965

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 11/03/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/509,994	Applicant(s) CHENE ET AL.	
	Examiner NAHID AMIRI	Art Unit 3679	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 August 2008 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☒ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Daniel P. Stodola/
Supervisory Patent Examiner, Art Unit 3679

Continuation of 10. Other (including any explanation in support of the above items): With respect to item 3, appellants identify an amendment filed April 25, 2008, i.e., after final rejection. However, pages 10, 15 and 16 of the appeal brief filed on August 14, 2008 makes reference to a "concurrently filed amendment". See lines 4-5 of page 10, lines 2-3 of page 15 and line 5 of page 16. The STATUS OF AMENDMENTS section makes no reference to any amendment filed on August 14, 2008 (i.e., concurrently with this appeal brief) and thus it is not known what amendment appellants are referring to. If no actual amendment was filed concurrently with the instant appeal brief, then the appeal brief should not include a statement indicating that one was filed.

Further with respect to the commentary supplied with the amendment of April 25, 2008, while appellants may have presented a claim amendment that may have "instantly overcome" the Section 112 issues, it is pointed out that such amendment was not limited to the change correcting the Section 112 ambiguity. Rather, such amendment included additional changes that raised new issues as was indicated in the advisory action mailed July 8, 2008. No attempt was made by appellants to file an amendment that included only the proposed change to correct the Section 112 ambiguity. Nevertheless, commentary not directed to identification of the amendment and its status as understood by appellants should not be included in this section. Furthermore, commentary regarding what claims are on appeal does not belong under this heading. See the last two lines, i.e., "(a)ccordingly, the claims under appeal are...filed September 6, 2007."

With respect to item 6, on page 16 of the instant appeal brief appellants present arguments regarding "substantially flat bearing faces". This limitation is not found in the finally rejected claims on appeal and it appears that appellants are not arguing such claims, but rather are arguing claims submitted after final rejection and not entered. Appellants should review the presented argument to ensure that it is addressing the claims on appeal and not claims that have not been entered into the file. Arguments directed to features not present in the claims on appeal are of little consequence and will not be addressed in the examiner's response.